

REMARKS

In a Final Office Action mailed on July 15, 2004, claims 1, 4, 5, 7-9, 11, 14, 17, 19, 20, 21, 23, 25-27, 29-31, 33, 35, 37, 42, 43, 46 and were rejected under 35 U.S.C. § 102(e) as being anticipated by Bray; claims 6, 10 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bray; claims 12, 13, 32, 34, 36, 38 and 49 were objected to as being dependent upon rejected base claims but allowable if rewritten in independent form; and claims 39-41, 44, 45, 50 and 51 were allowed. The §§ 102 and 103 rejections are addressed below.

Rejections of Claims 1-11, 31 and 42:

In the latest Office Action, the Examiner contends that because the auto-negotiation unit 36 selects either a 100 Mb/s or a 10Mb/s communication with the link partner 22 the auto-negotiation unit 36 somehow constitutes the data management module of independent claim 1. Office Action, 2. However, the mere selection of either the 10 Mb/s or 100 Mb/s rate does not disclose the data management module of independent claim 1. More specifically, Bray is clear that the selection of this rate is based on the communication with the link partner 22. *See* Bray, 3:3-7. Hence, the auto-negotiation unit 36 does not "negotiate" with any part of the PHY device 28, but rather, the auto-negotiation unit 36 negotiates with the link partner 22 for purposes of establishing the 100 Mb/s or 10 Mb/s rate. There is, however, no communication or retrieval of "configuration information for purposes of selecting one of the two bit rates. Therefore, Bray fails to disclose the auto-negotiation unit 36 of claim 1, as there is no teaching or even a suggestion in Bray that the auto-negotiation unit 36 accesses configuration in the physical device 28 to determine a predefined transmission characteristic.

Claims 2-11, 31 and 42 are patentable for at least the reason that these claims depend from an allowable claim. Therefore, for at least the reasons that are set forth above, allowance of claims 1-11, 31 and 42 is requested.

In response to the request to provide a reference to support the Official Notice in the last Office Action, the Examiner supplies Lindblad and Nandikonda to "support the Official Notice for the feature of "API." Office Action, 2. However, Applicant notes that in the discussion on pages 9 and 10 of the Office Action, the Examiner does not further elaborate how or why either of these references provides the necessary alleged suggestion or motivation to modify Bray so

that an API interface is located between a data module and a first transmitter module, as specifically set forth in claims 5 and 6. As previously pointed out, Applicant does not challenge the existence of an API in the prior art. However, Applicant still challenges the Examiner to show where such a suggestion or motivation in the prior art exists to modify Bray to incorporate the API, as specifically set forth in claims 5 and 6.

Regarding claim 10, the Examiner cites Suzuki and Fisk to supposedly show transmitting digital data over a transport medium. However, such a showing by itself does not complete a *prima facie* case of obviousness for claim 10. More specifically, claim 10 states that the data management module combines digital data with television data to transmit over a transport medium. Thus, the Examiner must show that one skilled in the art, would have been motivated to modify Bray so that the auto-negotiation unit 36, (i.e., the alleged data management module of claim 1) combines digital data with television data to transmit over a transport medium. In short, the Examiner still fails to show where the prior art contains the alleged suggestion or motivation for this modification of Bray. Without this showing, a *prima facie* case of obviousness has not been established for claim 10.

Therefore, for at least the additional, independent reasons that are set forth above, allowance of claim 10 is requested.

Rejections of Claims 14, 15, 17, 19, 20 and 33:

The transmission system of independent claim 14 includes a data management program to access this configuration information contained by a transmitter and modify the management of data flow based on this configuration information.

For at least the reasons set forth above in the discussion of independent claim 1, the auto-negotiation unit 36 does not select the 10 Mb/s or 100 Mb/s mode based on some configuration information contained in a transmitter. Therefore, for at least this reason, Bray fails to anticipate independent claim 14.

Claims 15, 17, 19, 20 and 33 are patentable for at least the reason that these claims depend from an allowable claim. Furthermore, for at least the reasons set forth above in the discussion of dependent claim 10, the Examiner still fails to show where the prior art contains the alleged suggestion or motivation to modify Bray to derive the missing claim limitations.

More specifically, the Examiner must show why one skilled in the art *would have modified the auto-negotiation unit 36 of Bray* to derive the limitations set forth in claim 15. Without this showing, a *prima facie* case of obviousness has not been set forth for this claim. Therefore, for at least this additional, independent reason, allowance of claim 15 is requested.

Rejections of Claims 21, 23, 25, 26 and 35:

The article of independent claim 21 includes a computer-readable storage medium that stores a program to cause a computer to retrieve stored information that identifies at least one transmission characteristic of a transmitter and modify data flow management based on the identified transmission characteristic(s).

For at least the reasons set forth in independent claim 1 above, Bray fails to teach or suggest these program instructions, as the auto-negotiation unit 36 does not base data flow management on configuration information. Therefore, for at least this reason, withdrawal of the rejections of claims 21, 23, 25, 26 and 35 is requested.

Rejections of Claims 27, 29 and 30:

The method of independent claim 27 includes accessing stored configuration information and identifying, based on the accessed configuration information, at least one transmission characteristic by a first transmitter.

For at least the reasons set forth above in the discussion of independent claim 1, Bray fails to teach or suggest an access. Therefore, allowance of claims 27, 29 and 30 is requested.

Rejections of Claims 46 and 48:

The computer-readable medium of independent claim 46 includes a program that stores instructions to cause a computer to retrieve stored information to identify at least one transmission characteristic of a transport medium.

Contrary to the limitations of claim 46, Bray fails to teach or suggest instructions to cause a computer to retrieve stored information that identifies at least one transmission characteristic of a transmitter. Thus, for at least the reasons set forth above in the discussion of independent claim 1, allowance of claims 46 and 48 is requested.

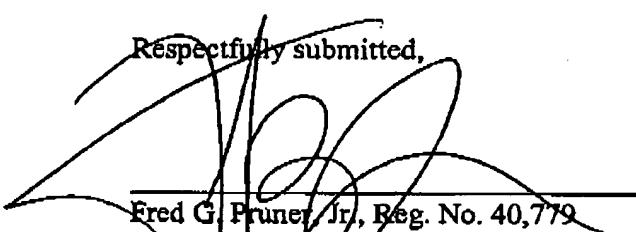
Furthermore, claim 46 recites that the instructions cause the computer to exchange the stored information on a continuous basis. Bray likewise fails to teach or suggest the auto-negotiation unit 36 retrieving this information from the PHY device 28 on a continual basis. Therefore, for at least this additional, independent reason, allowance of claims 46 and 48 is requested.

CONCLUSION

In view of the foregoing, withdrawal of the remaining §§ 102 and 103 rejections and a favorable action in the form of Notice of Allowance are requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0084US).

Date: September 15, 2004

Respectfully submitted,


Fred G. Pruner, Jr., Reg. No. 40,779
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Suite 100
Houston, TX 77024
713/468-8880 [Phone]
713/468-8883 [Fax]